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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,692	09/26/2003	Satoshi Hiratsuka	YAMA:059	9284
37013	7590	03/17/2008	EXAMINER	
ROSSI, KIMMS & McDOWELL LLP. P.O. BOX 826 ASHBURN, VA 20146-0826			WILLIAMS, JEFFERY L.	
ART UNIT	PAPER NUMBER			
	2137			
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03/17/2008	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/672,692	HIRATSUKA, SATOSHI	
	<b>Examiner</b>	Art Unit	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 26 September 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 26 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/146/08)  
 Paper No(s)/Mail Date 10162007/2062006

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## DETAILED ACTION

Claims 1 – 11 are pending.

## **Claim Rejections - 35 USC § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9 – 11 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Regarding claims 9 - 11 they comprise recitations of a computer program.

Computer instructions per se fail to fall within any of the statutory categories of invention. Therefore claims 9 - 11 are rejected as failing to recite statutory subject matter.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1       **Claims 1 – 11 are rejected under 35 U.S.C. 102(b) as being anticipated by**

2       **Nozaki et al., (Nozaki), US Patent Publication 2002/0036800 A1.**

3

4       Regarding claim 1, Nozaki discloses:

5           *a server storing device for storing, together with numerous contents, user*  
6           *information including user ID information and contents purchase information made of*  
7           *contents ID information and copy control data regarding the supplied contents, for each*  
8           *user of an information processing terminal registered in advance (fig. 3:8 - herein*  
9           *Nozaki discloses a server storing device);*

10           *and a server controlling section which, in response to a request for supplying*  
11           *contents from said information processing terminal, supplies the contents corresponding*  
12           *to the request to the relevant information processing terminal and amends the contents*  
13           *purchase information of the user corresponding to the request (par. 55, 60, 61) and*  
14           *which, in response to a request for copying the downloaded contents from said*  
15           *information processing terminal, reads out the copy control data of the relevant*  
16           *downloaded contents from the server storing device and supplies the copy control data*  
17           *to the relevant information processing terminal (par. 62, 63),*  
18           *and the information processing terminal comprises: a terminal storing device for*  
19           *storing the contents supplied from the server apparatus as downloaded contents (fig.*  
20           *4:21);*

1        *a sending section for sending the server apparatus a request for copying the*  
2        *downloaded contents; a receiving section for receiving the copy control data of the*  
3        *relevant downloaded contents from the server apparatus (fig. 4:36);*  
4        *and a terminal controlling section for determining whether or not to copy said*  
5        *downloaded contents into an external apparatus or recording medium in accordance*  
6        *with contents of the received copy control data (fig. 4:35).*

7

8        Regarding claim 2, Nozaki discloses:

9        *wherein the copy control data stored in said server storing device represents the*  
10      *number of times for permitting the copying of the corresponding contents into the*  
11      *external apparatus or recording medium, and is decremented every time the relevant*  
12      *contents are copied from the information processing terminal into the external apparatus*  
13      *or recording medium (par. 63, 73, 80).*

14

15      Regarding claim 3, Nozaki discloses:

16      *wherein the user information of said server storing device further includes*  
17      *terminal ID information representing one or more information processing terminals (par.*  
18      *89, 101),*  
19      *and said server controlling section supplies the relevant contents without*  
20      *executing a fee-charging process when the contents corresponding to the request for*  
21      *supplying the contents are contents that are already supplied to the information*  
22      *processing terminal that has sent the relevant request or to an information processing*

1 *terminal belonging to the same user as said information processing terminal* (par. 12-17  
2 – Nozaki does not disclose executing a fee charging process for previously owned  
3 contents).

4

5 Regarding claim 4, Nozaki discloses:  
6 *wherein said server storing device stores an initial value of the copy control data,*  
7 *contents by contents* (par. 63).

8

9 Regarding claim 5, Nozaki discloses:  
10 *wherein said contents are music data* (par. 28).

11

12 Regarding claims 6 – 11, they are program and apparatus claims corresponding  
13 to claims 1 – 5, and they are rejected, at least, for the same reasons.

14

15 ***Conclusion***

16

17 The prior art made of record and not relied upon is considered pertinent to  
18 applicant's disclosure:

19 ***See Notice of References Cited.***

20

21 A shortened statutory period for reply is set to expire **3** months (not less than 90  
22 days) from the mailing date of this communication.

Art Unit: 2137

1 Any inquiry concerning this communication or earlier communications from the  
2 examiner should be directed to Jeffery Williams whose telephone number is (571) 272-  
3 7965. The examiner can normally be reached on 8:30-5:00.

4 If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
5 supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone  
6 number for the organization where this application or proceeding is assigned is (703)  
7 872-9306.

8 Information regarding the status of an application may be obtained from the  
9 Patent Application Information Retrieval (PAIR) system. Status information for  
10 published applications may be obtained from either Private PAIR or Public PAIR.  
11 Status information for unpublished applications is available through Private PAIR only.  
12 For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should  
13 you have questions on access to the Private PAIR system, contact the Electronic  
14 Business Center (EBC) at 866-217-9197 (toll-free).

15

16  
17 J. Williams  
18 AU 2137  
19

20 /Emmanuel L. Moise/  
21 Supervisory Patent Examiner, Art Unit 2137  
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